IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 445 OF 2007

Laxman Bhairu Nikam
and 72 others. ... Petitioners.

V/s.

Modern Home Credit &
Capital Ltd. and others. ... Respondents.

Arshad Shaikh with Rajesh Gehani i/b.
Neha Choksi for the petitioners.

R.V.Paranjape for respondent No.1.

Ms.Neeta P. Karnik for respondent No.3.

CORAM: V.C.DAGA, J.

DATED: 13th March 2007.

P.C.:

. This petition is a second round of litigation, now initiated by the individual workmen to invoke certiorari jurisdiction of this Court seeking to recall record and proceedings in Reference (IT) No.84/1997 decided by the Industrial Tribunal, Mumbai vide its impugned award dated 5th November, 2004 and after examining legality, validity and propriety thereof to quash and set aside the same.

Factual Backdrop :

2. The petitioners are individual workmen. The respondent No.3 is a Union of which petitioner- workmen were the members. Respondent Nos.1 and 2 are the employers.

3. The respondent No.1 was running a laundry business under the reputed and well known brand of "BAND BOX". It is in existence for more than 50 years. Respondent No.2, a private limited company claims to have purchased laundry division of respondent No.1 with effect from 1st February, 1990, consequently, services of all the workmen of respondent No.1 including the petitioners were transferred to respondent No.2.

4. The workmen through their union disputed the aforesaid transfer alleged to be from respondent No.1 to respondent No.2 and, *inter alia*; demanded revision of their wages. However, grievances of the workmen were not redressed as such their demands were referred to the Industrial Tribunal for adjudication being Reference (IT) No.85/1992.

5. The workmen sometime in the year 1993 were

required to give notice of strike dated 12th August, 1993 to the respondents. The notice of strike did not have any effect on the respondents and, consequently, on and from 10th September, 1993, the workmen proceeded on strike. On or about 2nd December, 1994, the said strike was called off by the workmen. However, immediately, the respondent No.2 declared lockout and the workmen through their union filed a complaint being Complaint (ULP) No.212/1995 seeking, *inter alia*; to declare the lockout to be illegal and also prayed for consequential reliefs.

6. The Industrial Court by its judgment and order dated 31st March, 2004 was pleased to hold that the lockout was illegal and, *inter alia*; directed that the lockout be lifted and the workers were allowed to resume their duties. They were awarded full wages.

7. Being aggrieved by the aforesaid order dated 31st March, 2004 passed by the Industrial Court, respondent No.2 filed Writ Petition No.1834/2004 in this Court to challenge the said order.

8. This Court by its order dated 15th July, 2004 was pleased to remand the matter to the Industrial Court for adjudication afresh.

9. On or about 5th November, 2004, the respondent companies entered into an agreement with respondent No.3- union and moved an application before the Tribunal that the dispute with their workmen has been settled and, therefore, prayed for disposal of Complaint (ULP) No.212/1995 and Reference (IT) No.85/1992, which came to be disposed of accordingly.

10. The petitioners herein, now claim that the aforesaid settlement was behind their back and contrary to their interest. It was virtually a fraud played on them by their union and the employer in collusion with each other. Almost 84 workmen approached the Court and the Tribunal to get the aforesaid orders disposing of their complaint and reference proceedings set aside. The Industrial Court and Tribunal rejected their prayers made in this behalf.

11. It appears that the members of respondent No.3- union resigned from that union and joined another union, namely, Akhil Bharatiya Kamgar Sena registered under the Trade Unions Act. The said union filed Writ Petition No.1284/2005 in this Court for setting aside the award and order passed by the Industrial Tribunal and Court in the aforesaid reference and complaint and also challenged the validity of the agreement dated 5th November, 2004. The learned single Judge of this Court who was seized of this writ petition by his judgment and order dated 4th July, 2005 rejected the petition, *inter alia*; holding that the petitioner union did not have any locus to challenge the orders. It was further observed that since the representative union i.e. the Bombay Labour Union has already settled the disputes the said settlement made by the said union is binding on the workmen under section 18 of the Industrial Disputes Act, 1947. In the result, writ petition came to be dismissed vide order dated 4th July, 2005.

12. The aforesaid order of the learned single

Judge was challenged in Appeal No.730/2005 before the learned Division Bench of this Court. The learned Division Bench found no illegality or perversity in the order of the learned single Judge. In addition to this learned Division Bench also found that respondent No.3 herein, Bombay Labour Union was not impleaded as party respondent in the writ petition filed before the learned single Judge. Consequently, appeal came to be dismissed on merits holding that no perversity or illegality was involved in the order of the learned single Judge as also for non-joinder of the said union as party respondent to the petition. However, it will be relevant to note that the learned single Judge did not record any finding with respect to non-joinder of respondent No.3- union.

13. The aforesaid order of the Learned Division Bench was a subject matter of challenge before the Hon’ble Supreme Court in Special Leave Petition (S.L.P.) filed on 3rd February, 2006 at the instance of the individual workmen i.e. present petitioners. When the matter came up for hearing before the Hon’ble Supreme Court, learned

counsel appearing for the applicants/ workmen sought permission to withdraw S.L.P. with liberty to file appropriate petition before the High Court to implead respondent No.3- union. The Hon'ble Supreme Court was pleased to permit withdrawal of S.L.P. as prayed with observation that in the event of filing any such petition the same would be dealt with by the High Court in accordance with law with specific mention, "We express no opinion". In other words, the Hon'ble Supreme Court simply permitted withdrawal of the S.L.P. without granting any leave and without any observation with regard to correctness or otherwise of the prayer made and also chose to specifically express no opinion in the matter. In other words, everything was left open for being decided by the High Court in the event of any petition for impleadment.

14. The petitioners having withdrawn the S.L.P., now chose to file present writ petition under Article 226 of the Constitution of India to once again challenge the award and order both dated 5th November, 2004 passed by the Industrial Tribunal and Industrial Court, Mumbai

respectively. the maintainability of such petition is a core issue for consideration in view of the rival submissions.

Consideration :

15. Having heard rival counsel appearing for the parties, I am of the considered view that such second petition at the instance of the individual workmen, in the facts and circumstances of the present case, is not maintainable for want of more than one reason. Firstly, because the order of the learned single Judge dated 4th July, 2005 passed in Writ Petition No.1284/2005 was a speaking order based on reasons dealing with the merits of the matter; wherein a categorical finding reading as under was recorded:

> "Petitioner has not shown what locus it has to challenge the said orders. In paragraph no.1, there is a vague statement that the petitioner represents workmen of the respondents. There are about 275 workmen employed under the respondents. In the whole of the petition, petitioner has not stated how many workmen it represents. the representative union has settled the disputes and it appears that the petitioner on behalf of a miniscal minority pollute the settlement. The settlement made by the Bombay Labour Union is binding on the workmen u/s.18 of the Industrial Disputes Act."

(Emphasis supplied)

16. Perusal of the above order would show that the petition was not dismissed for non-joinder of necessary party. With the aforesaid order of the learned single Judge, the matter went before the learned Division Bench; wherein the learned Division Bench observed as under:

> "..... We have perused the impugned order. We do not find anything illegal or perverse with the same, especially when all the disputes have been amicably resolved between the employer and union.
>
> Appeal is devoid of any merits and the same is dismissed accordingly."

17. It is no doubt true that the learned Division Bench has also observed that the Bombay Labour Union, respondent No.3 herein should have been impleaded as party respondent before the learned single Judge, but that itself was not the single ground for rejection of the appeal. After examining the order of learned single Judge on merits, the learned Division Bench did not find any illegality or perversity in the said order, as such the appeal was dismissed.

18. The aforesaid order of the Learned Division Bench was challenged before the Hon'ble Supreme Court by filing S.L.P. which, ultimately, came to be withdrawn as mentioned hereinabove.

19. In the above view of the matter, the question of tenability of the second writ petition by way of second round of litigation needs to be considered. The law is now well settled that if the order is on the merits it would be a bar; if the order shows that the dismissal was for the reasons that the petitioner was guilty of laches or that he had an alternative remedy; it would not be a bar. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be create a bar of *res judicata*. It is true that, prima facie; dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all, but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary

dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition.

20. Keeping the aforesaid settled legal principles in mind, if the orders of the learned single Judge and the Learned Division Bench are perused, by no stretch of imagination it can be said that the orders were not on merits. As such, in my considered opinion, principle of *res judicata* would be very much applicable. It is no doubt true that if the adverse orders would have been passed only on the ground of non-joinder of necessary party, the the principle of *res judicata* would not get attracted. However, these orders are passed on both grounds i.e. technical ground of non-joinder of party as well as on merits. In these peculiar circumstances, the orders of this Court in earlier round of litigation shall certainly operate as *res judicata.*

21. In the case of **State of Haryana and others v. K.N.Dutt**, (1995) 3 SCC 144, the retired Chief Engineer of the Irrigation Department of Haryana State, after his retirement had filed

writ petition to claim outstanding retirement benefits. The Learned Division Bench of the High Court of Punjab & Haryana vide its order dated 21st November, 1990 was pleased to direct the Government of State of Haryana, the respondent therein to release all pensionary benefits of the petitioner to which he was entitled under the rules. Thereafter contempt proceedings came to be initiated for implementation of the judgment dated 21st November, 1990. Finally, learned single Judge of the High Court after hearing contempt petition by his order dated 28th April, 1993 recorded that after recovery of Government dues from the gratuity of the superannuated employee, the balance amount had been disbursed to the petitioner therein and, as such, the order dated 21st November, 1990 was complied with.

22. It appears that another writ petition was filed by the superannuated employee, *inter alia;* praying for declaration that the deduction of Government dues from the amount of gratuity was illegal. The Learned Division Bench vide its order dated 10th December, 1993 was pleased to pass the order directing the respondent therein,

the State Government to refund the amount deducted from the gratuity of the superannuated employee. Being aggrieved by the order of the learned Division Bench, S.L.P. was preferred before the Supreme Court, wherein the Hon'ble Supreme Court observed as under:

> ".....It is rather surprising that the Division Bench totally ignored the earlier order dated 28-4-1993, passed by the court. It is anybody's guess as to what prompted the Learned Division Bench to ignore the earlier order dated 28-4-1993 and to pass the impugned order dated 10-12-1993. The respondent, a senior retired officer, himself owed a duty to bring to the notice of the court the earlier order dated 28-4-1993. We are not in a position to know whether it was so done. This is a serious lapse indeed, which cannot be countenanced. It is an abuse of the process of the court. We are further inclined to hold that the Division Bench of the High Court seems to have passed the order in a casual manner in holding that the sum of Rs.24,996 was deducted illegally by the State Government from the gratuity of the respondent and in ordering the refund. The order so passed is patently unsustainable, improper and illegal. Such a plea was not open to the respondent in the light of the earlier order of the Court dated 28-4-1993. The Division Bench acted illegally in entertaining such a prayer and allowing it, totally ignoring the earlier order of the same court passed in Contempt Petition No.COCP 1080 of 1991 dated 28-4-1993. We, therefore, set aside the order passed by the High Court dated 10-12-1993 and allow this appeal with costs."
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> (Emphasis supplied)

23. In the case of **State of U.P. v. Labh Chand**, AIR 1994 SC 754, the Apex Court had an occasion to deal with a case more or less similar to the case on hand and was pleased to observe as under:

> "When a Judge of single Judge Bench of a High Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already by another single Judge Bench or a Division Bench of the same High Court, even if such dismissal was not on the ground of laches or on the ground of non-availing of alternate remedy. Second writ petition cannot be, so entertained not because the learned single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same Court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognised power. Besides, if a learned single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed in limine by another learned single Judge or a Division Bench of the same Court, it would encourage an unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant

> to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the Court refusing to entertain a writ petition. It is why, the Rule of judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject-matter respecting which the first writ petition of the same person was dismissed by the same Court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary Rule in exercise of writ jurisdiction of Courts."
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> (Emphasis supplied)

24. Having taken survey of the settled legal position, in my considered view, this second petition filed at the instance of the individual workmen is not maintainable. No order in favour of the petitioners would be passed because it would result in two inconsistent orders holding the field in the same litigation. There cannot be a order by this Court running counter to the order of the learned single Judge dated 4th July, 2005 affirmed by the Learned Division Bench of this

Court dated 27th September, 2005 which are still holding the field.

25. In the result, for the reasons recorded, petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)